



Comptroller General  
of the United States

Washington, D.C. 20548

153974

## Decision

Matter of: Willis Nordlund

File: B-257724

Date: March 24, 1995

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### DIGEST

An employee whose permanent duty station was in New York City was assigned to temporary duty in Washington, DC. He commuted to his temporary duty station from his family residence in Reston, Virginia. While still on temporary duty, he was transferred to a new permanent duty station in Dallas, Texas. Since Washington, DC, was the employee's temporary duty station at the time of his transfer to Dallas, he does not qualify for reimbursement of real estate sales expenses for the Reston residence upon his transfer to 5 U.S.C. § 5724a(a)(4).

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### DECISION

The U.S. Department of Labor requests an advisory opinion concerning the entitlement of Mr. Willis Nordlund to be reimbursed real estate expenses for the sale of his residence in Reston, Virginia, pursuant to a transfer in the interest of the government to Dallas, Texas.<sup>1</sup> For the reasons that follow, Mr. Nordlund is not entitled to be reimbursed.

### BACKGROUND

Effective March 3, 1990, Mr. Nordlund was transferred from Washington, DC, to New York City. Mr. Nordlund's family remained at his residence in Reston, Virginia, and he obtained rental quarters in New York from which he commuted daily to his new permanent duty station. During his tenure in New York City, he returned to Reston, Virginia, on weekends.

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<sup>1</sup>The request for an advance decision under the provisions of 31 U.S.C. § 3529 (1988), was submitted by William R. Reise, Acting Chief Financial Officer, U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Washington, DC.

On February 17, 1992, Mr. Nordlund was detailed for 120 days temporary duty to Washington, DC, in the Employment Standards Administration. His detail was extended until October 14, 1992, followed by another detail which terminated on February 11, 1993. While on temporary duty in Washington, Mr. Nordlund resided with his family in Reston. Upon completion of his temporary duty, Mr. Nordlund was authorized a permanent change of station from New York City to Dallas, Texas. He reported to duty in Dallas on March 22, 1993.

Mr. Nordlund was advised by his agency that he would not be allowed reimbursement for real estate expenses if he sold his residence in Reston since it was not located at his old duty station in New York City.<sup>2</sup>

In appealing to our Office, Mr. Nordlund contends that, after 2 years service in New York, he was detailed back to Washington, DC, with the expectation that a permanent position would be found during the tenure of the detail. He states that the temporary duty was extended several times to permit him to stay in Washington, but that, before a permanent position could be found, he was reassigned to Dallas to fill a vacancy there following the death of the incumbent OWCP (Office of Workers Compensation Programs) regional director. He further states that he had no intention of relocating to New York and therefore maintained his residence in Virginia.

Mr. Nordlund contends that, once the agency realized that his duty in Washington was going to be long-term, he should have been authorized a permanent change of station back to Washington, DC. This action by his agency would have entitled him to reimbursement for his residential sale expenses. He states that Reston was his commuting residence during his details in Washington, and he believes that he should be entitled to reimbursement of real estate expenses upon the sale of his Reston residence.

## OPINION

The basic issue in this case is whether the assignment back to Washington, DC, in 1992-1993 was temporary duty as the agency contends or permanent duty as the employee contends. The standard to be applied is set forth in Edward W. DePiazza, 68 Comp. Gen. 465, at 466 (1989), as follows:

"Whether an assignment to a particular station is temporary or permanent is a question of fact to be determined from the orders under which the assignment is made, the character of the assignment, its duration, and the nature of the duties. 33 Comp. Gen. 98 (1953); *Ervin E. Drossel*, B-203009, May 17, 1982. Our decisions concerning the length of an

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<sup>2</sup>Mr. Nordlund's travel order dated March 5, 1993, was amended March 15, 1993, to correct the real estate entitlement from "sale and purchase" to "purchase only."

assignment have not established any hard and fast rules; however, they hold that the duration should generally be brief. *Bertram C. Drouin*, 64 Comp. Gen. 205 (1985); *Peter J. Dispenziri*, 62 Comp. Gen. 560 (1983)."

See also Peter F. Dessauer and Richard E. Wells, 68 Comp. Gen. 454 (1989).

If Mr. Nordlund's assignment is determined to be temporary, then real estate expenses may not be reimbursed. Section 5724a(a)(4), title 5, United States Code, authorizes an agency to reimburse an employee transferred in the interest of the government for the "expenses of the sale of the residence . . . of the employee at the old station and purchase of a home at the new official station . . . ."

The regulations implementing this section are found in Chapter 302, Part 6, of the Federal Travel Regulation (FTR), 41 C.F.R. ch. 302 (1994).

Section 302-1.4(k) and 302-6.1(b) of the FTR,<sup>3</sup> when read together, establish the requirement that, in order for an employee to be reimbursed residence sales expenses, the residence must be the one from which the employee regularly commuted to and from the old official station.<sup>4</sup> The performance of temporary duty away from the official station does not effect a change of station during the pendency of the temporary duty assignment.<sup>5</sup>

Although the duration of Mr. Nordlund's temporary duty might suggest that his assignment to Washington was permanent, that is only one factor to be considered. It is also necessary to consider the character of the assignment and the nature of the employee's duties. The initial detail was for 120 days to serve on a departmental task force and, although it was extended 5 months, this was clearly temporary in nature. The second detail was to help prepare an economic impact analysis on certain proposed legislation. Again, although this detail was also extended, it was likewise temporary in nature. At the end of the second detail, Mr. Nordlund was transferred to Dallas.

In response to Mr. Nordlund's statement that the agency intended for him to remain permanent in Washington, DC, the Department of Labor conducted an investigation, reporting:

"Officials of the Employment Standards Administration advised that they

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<sup>3</sup>41 C.F.R. § 302-6.1(b) and § 302-1.4(k) (1994).

<sup>4</sup>*Deborah L. Childress*, B-253202.2, Mar. 9, 1995; *Donnette Gilmore*, B-241196.7, Aug. 13, 1993; *Roger W. Montague*, B-251211, Feb. 4, 1993.

<sup>5</sup>*John E. Wright*, 64 Comp. Gen. 268, 272 (1985); 52 Comp. Gen. 834 (1973).

never intended that Mr. Nordlund be assigned to permanent duties in Washington, D.C. in 1992 and noted the fact that he had received several details to unclassified duties."

Another indication that the Washington duty was intended to be temporary is that Mr. Nordlund continued to receive 8 percent locality pay, based on the fact that New York City was his permanent duty station, for the entire period that he was detailed to Washington. Locality pay for the Washington, DC, area was not authorized until January 1994, subsequent to Mr. Nordlund's detail. See, 5 U.S.C.A. § 5304, note.

Thus, looking at the orders directing the assignment, its duration, and the nature of the duties performed, we conclude that Mr. Nordlund's assignment to Washington, DC, was in fact a temporary duty assignment.

We note that when Mr. Nordlund was assigned to permanent duty in New York, he could have sold his Reston residence and moved to New York. The expenses of this sale would have been reimbursable. Had he purchased a residence in New York, he could have been reimbursed for the real estate expenses incurred in its sale on the occasion of the change of his permanent duty station from New York to Dallas. He did not elect this course, however.

Because New York City remained Mr. Nordlund's permanent duty station during his temporary details in Washington, DC, the agency correctly advised Mr. Nordlund that he would not be entitled to real estate sales expenses for the sale of his residence in Reston, Virginia, in connection with a permanent change of station to Dallas. Since his residence in Reston is not located at his old duty station, he is not entitled to reimbursement for residential sales expenses. See, Hollis Whitaker, B-245933, Feb. 28, 1992; John F. Conlon, B-240089, Nov. 19, 1990; B-240089.2, May 14, 1991.

Accordingly, we concur with the Department of Labor's determination that Mr. Nordlund would not be entitled to reimbursement of real estate expenses upon the sale of his Reston residence.

Robert P. Murphy  
General Counsel

B-257724

The Honorable Kay Bailey Hutchison  
United States Senator  
10440 N. Central Expressway  
Suite 1160 LB 606  
Dallas, Texas 75231

Dear Senator Hutchison:

This responds to your letter of October 19, 1994, forwarding the request of your constituent, Mr. Willis Nordlund, for an advisory opinion on his entitlement to real estate sales expenses incident to his transfer to Dallas, Texas, as an employee of the Department of Labor.

We have given careful consideration to the arguments made by Mr. Nordlund in his letter to you, dated October 12, 1994, but we cannot find that the Department of Labor acted erroneously in determining that Mr. Nordlund would not be entitled to real estate expenses upon the sale of his residence in Reston, Virginia. A copy of our decision, dated today, is enclosed.

We trust this is responsive to your request.

Sincerely yours,

Robert P. Murphy  
General Counsel

Enclosure